

## **REMARKS**

This application has been carefully reviewed in view of the current office action, and Applicants hereby request reconsideration in view of the following amendments and arguments.

1. The Rejections Based on Hughes, et al.

Regarding all rejections based upon the issued Hughes, et al. Patent no. 6,670,537, under the judicially created doctrine of obviousness-type double patenting, Applicants submit herewith a terminal disclaimer to obviate the rejection. In view of this submission, it is believed that these rejections are no longer viable. Reconsideration and allowance is respectfully requested.

2. The Rejection of claims 1, 2, 6 and 8

Regarding the rejection to claims 1, 2, 6 and 8 under 35 U.S.C. §102(e) as anticipate by Fritsch, reconsideration is respectfully requested for the following reasons. Applicants have amended claim 1 (and by such amendment also amended claims 2, 6 and 8), by incorporating the limitations of claim 4. (It is noted that since this amendment effectively recasts claim 4 in independent form, no new issue is being presented for consideration.) Claim 1 as amended requires that the sample be received by email from a sender. Since this is not disclosed in Fritsch, the anticipation rejection is believed clearly overcome. However, it is noted that the Office Action rejects claim 4 as obvious in view of Fritsch combined with the kang patent. Accordingly, this issue is addressed below.

The Office Action's position is that the kang reference teaches distributing music as an email attachment. However, the kang reference only teaches distribution of the music content in it's entirety not distribution of a sample. Thus, claim 1 as amended calls for receipt of an email that provides both a sample of content plus a link that enables purchase of the complete copy of the content. This is neither taught nor suggested by the cited references which clearly only contemplates full distribution of the complete copy of the content by the users.

The undersigned finds no suggestion in the Fritch reference of any use of email to provide for distribution of samples. Samples are available in Fritch in order for an online customer to “pre-listen” to a potential purchase, but the user must first find the sample by navigating to the appropriate site and then apparently manually download or stream the sample and then download or otherwise purchase the full content. There is no suggestion of distribution of samples by email to entice a recipient to purchase the content.

The kang reference also falls short of the meeting the limitations of claim 1 as amended. While kang does disclose transmitting music via email, there is no evidence that kang in any way contemplates distribution of anything other than a full copy of the content. As best understood by the undersigned, users are encouraged by payment to redistribute the content. Users are apparently discouraged against using the content without payment by virtue of being asked to pay each time play of the content is attempted.

In certain embodiments of Applicants’ invention, on the other hand, users can freely distribute the sample which can be freely played without restriction in hopes that those users that like the content will use the associated link to purchase the content. If Fritch is combined with kang as suggested in connection with the rejection of claim 4 (now claim 1), such that samples that are available in Fritch are distributed rather than the full content, Applicants are unable to determine how the hierarchical payment mechanism of kang would function. In fact, it is believed that such a function would be useless or destroyed along with destruction of one of kang’s primary objectives - allowing a user to redistribute the content and be compensated for it. (See page 1, paragraph 10). It is further submitted that there is no suggestion in the art that would lead to the proposed combination. Accordingly, reconsideration and allowance of claims 1, 2, 6 and 8 as amended is respectfully requested.

### 3. The Rejection of Claim 7

Regarding the rejection of claim 7, the arguments of section 2 above are equally applicable. Moreover, it is noted that claim 7 calls for the sample to be compressed, not

the full content. Accordingly, Fritsch further fails to meet or suggest the limitation. Reconsideration and allowance is respectfully requested.

4. The Rejection of Claims 3, 22 and 25-27

Claims 3, and 22-27 have been cancelled without prejudice. Applicants reserve the right to re-present these claims in a continuing application.

5. The Rejection of Claims 4, 5, 9-14, and 28-37

Regarding claim 4, this claim has been cancelled and recast as claim 1.

Regarding claim 5, the arguments of section 2 are equally applicable. Reconsideration and allowance is respectfully requested.

Regarding claims 9-11, the arguments of section 2 above are applicable. Claim 9's features are similar to those of claim 1 except that they are more specific as to the delivery and of the purchased copy and the nature of the link. Accordingly the undersigned position is similar. Claim 10 has been cancelled since it inadvertently calls out a feature already appearing in claim 9.

Regarding claim 11, although affinity credits of various sorts are described in kang, this reference teaches a specific mechanism of tracking the affinity credits (or payment). In Kang, a security code is set on the digital contents in order to track the payment. Since the current invention utilizes no such security code for transmission of samples, kang's technique is believed inapplicable to the present invention. Moreover, in the present embodiment, affinity credits are provided to a distributor of samples, not for distribution of the content. If Fritsch is combined with kang to distribute Fritsch's sample, one would have to use kang's security codes to track the distribution. However, kang's security codes are believed inapplicable except where the content itself is encrypted and distributed. If the samples are encrypted, Applicant's invention may be rendered cumbersome and ineffective. Any such combination is, thus, rendered illogical and there can therefore be no motivation in the art to make such a combination. Accordingly, reconsideration and allowance is respectfully requested.

Regarding claims 12-14, and 28-31, these claims have been cancelled without prejudice. Applicants reserve the right to represent these claims in a continuing application.

Regarding claims 32-37, Applicants respectfully request reconsideration. It is respectfully submitted that none of the cited references teaches or suggests a method for providing affinity credits to someone who distributes samples of content. The only relevant teachings of the cited references relate to providing affinity credits for actual distribution of content. In order to do so, the content is specially modified using the security codes described in paragraphs 29-31 in order to both track the distributor and disable the security verification on users that have paid for the content. The security verification is inapplicable to the claimed invention of claims 32 - 35 since the samples are distributed in the clear. Clearly, failure to use such security verification defeats the function of kang and is improper in order to produce an obviousness rejection. Reconsideration and allowance of claims 32 - 35 is thus respectfully requested.


6. The Rejection of Claims 15-21, 23 and 24

Claims 15-21, 23 and 24 have been cancelled without prejudice. Applicants reserve the right to represent these claims in a continuing application.

Thus, it is submitted that the current claims are allowable over the cited art. Reconsideration and allowance is respectfully requested. No amendment made herein was related to the statutory requirements of patentability unless expressly stated herein. No amendment made was for the purpose of narrowing the scope of any claim unless an argument has been made herein that such amendment has been made to distinguish over a particular reference or combination of references. The undersigned additionally notes that many other distinctions exist between the cited references and the invention as claimed. However, in view of the clear deficiencies in the art as pointed out above, further discussion of these deficiencies is believed to be unnecessary at this time; failure to address each point raised in the Office Action should accordingly not be viewed as accession to the Examiner's position. In view of this communication, all claims are

believed to be in condition for allowance and such is respectfully requested at an early date.

Respectfully submitted,

  
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